THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 16781 of 1997

Dated: 08-02-2007

Between:-

Smt. G. Manemma w/o late Narasimhloo, aged about 35 years occ: Household, R/o Palem, Bijinapally Mandal, Mahaboobnagar District.

…Petitioner

And

The Labour Court-III, 4th floor, Chandravihar building, M.J. Road, Nampally, Hyderabad, represented by Presiding Officer
and two others.

…Respondents

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O R D E R

Having found that the petitioner had worked for more than 240 days and that the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the I.D. Act') was applicable and that Section 25-B of the I.D. Act had not been complied with, the Labour Court III, Hyderabad in I.D. No. 556 of 1992, dated 24.10.1994 passed an award denying the relief of reinstatement on the ground that it was not expedient to do so and held that the ends of justice would be met if payment of retrenchment compensation was ordered rather than reinstatement and directed that the petitioner shall be paid retrenchment compensation at the rate of 15 days average pay for each calender year as provided under Section 25-F of the I.D. Act. Aggrieved thereby, the present writ petition is filed.

Sri V. Narasimha Goud, learned counsel for the petitioner would vehemently contend that having held that the petitioner had complied with the requirements of continuous service prescribed under Section 25-B of the I.D. Act and having observed that Section 25-F of the I.D. Act was applicable and that the conditions prescribed therein had not been complied with, the Labour Court had grossly erred in directing retrenchment compensation as required under Section 25-F of the I.D. Act. Learned counsel submits that, since violation of Section 25-F of the I.D. Act would render the termination of services *ab initio* void, the workman is entitled to reinstatement of service with continuity of

service with full back wages.

Section 25-F of the I.D. Act prescribes the conditions precedent to retrenchment of a workman. As has been held in catena of judgments of the Supreme Court, the conditions prescribed under clauses (a) and (b) therein are conditions precedent to retrenchment and failure to comply with these conditions would render the termination itself *ab initio* void. The award of the Labour Court, in effect, would amount to the conditions prescribed under clauses (a) and (b) of Section 25-F of the I.D. Act capable of being complied with subsequent to the termination of the service of the workman also. The award of the Labour Court is patently illegal.

Once an employee is held entitled for the protection of Section 25-F of the I.D. Act and that his termination was without complying with the mandatory requirements of clauses (a) and (b) thereof, there was no justification for the Labour Court in directing payment of retrenchment compensation after the services of the employee had been terminated, for that would render the very statutory provision which requires the conditions stipulated in clauses (a) & (b) therein to be complied prior to retrenchment redundant. It is no doubt true that every case of non-compliance of Section 25-F of the I.D. Act, does not necessitate reinstatement into service and that, instead, the Labour Court can direct payment of compensation in lieu of reinstatement. It must, however, not be lost sight of that the compensation payable, in lieu of reinstatement, cannot be the retrenchment compensation as prescribed in clause (b) of Section 25-F of the I.D. Act, for if the compensation was so restricted then it would amount to the mandatory conditions stipulated in Section 25-F, which are conditions precedent to retrenchment, being capable of compliance even subsequent to termination of service. Such a construction would be contrary to the

plain and unambiguous language of Section 25-F of the I.D. Act which specifically provides that the conditions in clauses (a) and (b) thereof are conditions precedent and not conditions capable of compliance subsequent to the termination of the service of a workman.

The compensation, which a workman should be paid in lieu of reinstatement, must, necessarily, be more than what he would be entitled to under clauses (a) and (b) of Section 25-F of the I.D. Act. How much more, however, is for the Labour Court to determine on the facts and circumstances of each case. It is not for this Court in proceedings under Section 226 of the Constitution of India, to decide whether the petitioner should be reinstated into service or whether he should be paid compensation in lieu of reinstatement.

The impugned award is quashed and the matter is remanded to the Labour Court for its consideration afresh, in accordance with law. Since the dispute relates to the year 1992 and a decade and half has elapsed since then, it is necessary that the Labour Court disposes of the I.D. as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order, after hearing both sides.

The writ petition is allowed. However, in the circumstances, without costs.

RAMESH

RANGANATHAN,J
8th February, 2007
vp